

SBCivil Writ Petition No.3746/2006

Smt.Bheera
Vs.
State of Rajasthan & Anr.

Date of Order :: 6th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.R.Gurjar, for the petitioner.
Mr. Shyam Ladreacha, Addl.Govt.Advocate.

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The petitioner has questioned validity of the office order dated 13.6.2006 passed by Divisional Forest Officer, Jodhpur to retire the petitioner from service w.e.f. 31.10.2006.

In brief, facts of the case are that the petitioner entered in service of the respondents being appointed as Beldar w.e.f. 1.4.1985. The semi permanent status was conferred to the petitioner under an order dated 30.3.1992 w.e.f. 1.4.1987. A provisional seniority list of Beldars was declared by the respondents on 1.4.1995 wherein the date of birth of the petitioner is shown as 18.12.1951. It is pertinent to note that the petitioner at the time of her appointment as Beldar declared and recorded 18.12.1951 as her date of birth. The 18.12.1951 was shown as date of birth of the petitioner by the respondents in final seniority list of Beldars dated

16.12.1995 and the same date is shown as date of birth of the petitioner in her identity card dated 15.4.1995 issued by Election Commission of India. The same date is entered as date of birth of the petitioner in her record pertaining to State Insurance Policy. The respondents abruptly by order impugned ordered for retirement of the petitioner from service w.e.f. 31.10.2006 by treating 11.10.1946 as her date of birth. Hence this petition for writ is preferred.

It is contended by the petitioner that the respondents are having no authority to change the date of birth unilaterally. The reliance is also placed by the petitioner upon provisions of Rule 8(2) of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the Rules of 1951") that prescribes that where the minimum qualification prescribed for appointment to a post under government is below secondary/higher secondary or equivalent, the date of birth shall be determined with reference to the certificate of date of birth issued by Municipality or Panchayat or School according to entries made in their respective records and in the event of non availability of aforesaid certificate the date of birth declared by the applicant at the time of first appointment is to be accepted. It is emphasised by counsel for the petitioner that 18.12.1951 was the date declared by the petitioner at the time of her first appointment, therefore, in view of provisions of Rule 8(2)(b)(ii)

of the Rules of 1951 it is to be accepted by the respondents.

In reply to the writ petition it is stated by the respondents that a medical examination was made on basis of physical appearance of the petitioner and the medical officer after examining the petitioner on 2.11.1996 found the age of the petitioner about 50 years, as such the petitioner was ordered to be retired from service on acquiring the age of 60 years on 31.10.2006.

Heard counsel for the parties.

At the first instance it is made clear that provisions of the Rules of 1951 are having no application in present controversy as the petitioner is a member of work charge cadre and application of the Rules of 1956 is barred for such employees in view of Rule 2(g) of the Rules of 1951. Be that as it may, it is the position admitted that at the time of first appointment the petitioner declared 18.12.1951 as her date of birth. It remained unchanged in various documents of the respondents. The respondents on basis of a medical examination determined the year 1946 as birth year of the petitioner. The recommendation made by the medical officer is available on record as Anx.R/3. As a matter of fact the certificate given by the medical officer is a most cryptic one and it does

not disclose any expertness in determining the age. It simply mentions that on basis of general appearance the age of the petitioner appears to be 50 years on 2.11.1996. Such a recommendation of medical officer cannot be a basis for change of date of birth. The petitioner at the time of her first appointment declared 18.12.1951 as her date of birth and nothing is available on record to disbelieve the date of birth given by the petitioner. If the respondents were having any doubt about genuineness of date of birth of the petitioner then they should have given a notice to the petitioner and only after adhering principles of natural justice a change in date of birth could have been made. The entire procedure adopted by the respondents to change the date of birth of the petitioner is highly unjust and arbitrary, beside in violation of principles of natural justice. By entering and acceptance of the date of birth as 18.12.1951 a valuable right accrued in favour of the petitioner to continue in service till arriving the age of 60 years. Such a right could not be disturbed unilaterally.

In view of it, the determination of date of birth of the petitioner as 11.10.1946 by the respondents is declared illegal. The order dated 13.6.2006 to retire the petitioner from service w.e.f. 31.10.2006 is also declared illegal. The same, therefore, is quashed.

The writ petition is allowed accordingly with cost in a tune of Rs.5,000/-, that is required to be paid to the petitioner by the respondents within a period of three months from today.

(GOVIND MATHUR),J.

kkm/ps.